

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GILBERT EUGENE MAESTAS,

No. C 05-4331 SI (pr)

Petitioner,

ORDER OF DISMISSAL

v.

PEOPLE OF THE STATE OF
CALIFORNIA,

Respondent.

Gilbert Eugene Maestas has filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, in which he challenges his 2004 conviction from the Mendocino County Superior Court. His petition is now before the court for review pursuant to 28 U.S.C. §2243 and Rule 4 of the Rules Governing Section 2254 Cases.

Prisoners in state custody who wish to challenge either the fact or length of their confinement in federal court by a petition for writ of habeas corpus are first required to exhaust state judicial remedies, either on direct appeal or through collateral proceedings, by presenting the highest state court available with a fair opportunity to rule on the merits of each and every issue they seek to raise in federal court. 28 U.S.C. § 2254(b),(c); Granberry v. Greer, 481 U.S. 129, 133-34 (1987). Maestas has not done so; nor has he presented any exceptional circumstances to excuse his doing so. See id.


1 Maestas' petition shows that he has not filed a petition for review or a petition for writ of
2 habeas corpus in the California Supreme Court. The California Supreme Court has not been given
3 a fair opportunity to rule on the merits of Maestas' claims concerning his conviction. Maestas
4 must file a state habeas petition (or a petition for review, if it is not too late) and give the
5 California Supreme Court a fair opportunity to rule on the merits of all his claims before
6 presenting these claims in federal habeas petitions.

7 Maestas is also cautioned that the federal court can only consider claims for violations of
8 the constitution, laws and treaties of the United States, see 28 U.S.C. § 2254, and cannot grant
9 relief for state law errors.

10 For the foregoing reasons, the petition is DISMISSED without prejudice to Maestas filing
11 a new habeas action after available state judicial remedies are exhausted. The in forma pauperis
12 application is DENIED. (Docket # 2.) The clerk shall close the file.

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14 IT IS SO ORDERED.

15 DATED: November 15, 2005

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18 SUSAN ILLSTON
19 United States District Judge
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